THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.23607 of 1995

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 02-11-2006

Between:

Mr.Bhagavathula Seetharamanjaneyulu .. Petitioner

and

The Commissioner & Special Officer,
Municipal Corporation of Hyderabad,
Tank Bund, Hyderabad and another .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.23607 of 1995

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The petitioner seeks a writ of Certiorari to quash the judgment, dated 21-08-1995, in L.G.C.No.87 of 1994 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act (for brevity, 'the Act') Hyderabad.

The writ petitioner is the applicant, who filed L.G.C.No.87 of 1994 seeking eviction of the first respondent from the land in dispute on the premise that he is the owner thereof and the first respondent has grabbed the land.

Briefly stated the facts are thus:

The land in dispute admeasuring 1700 square yards is part and parcel of Sy.No.115, the total extent whereof is Acs.6.35 guntas. The entire land covered by Sy.No.115 was owned and possessed originally by, one, Mohd. Ibrahim. The said Ibrahim applied in the year 1962 to the Municipal Corporation of Hyderabad for sanction of a lay out and lay out plan was prepared dividing the entire extent of land into

34 plots. The first respondent-corporation approved the lay out vide its proceedings No.112/Open./F/62. The applicant entered into an agreement of sale, dated 23-02-1962, with the said Mohd. Ibrahim for purchasing the entire land. After the lay out was approved and sanctioned by the Corporation, the applicant sold the entire plots, except plot Nos.27, 29 and 34 to various persons, however, the sale deeds were executed by late Mohd. Ibrahim, the original owner thereof. During the lifetime of late Mohd. Ibrahim, the applicant got an unregistered sale deed, dated 09-01-1965, executed by late Mohd. Ibrahim in respect of the plot Nos.27, 29 and 34, after paying the entire sale consideration. Before the execution of the registered sale deed, Mohd. Ibrahim suddenly died on 18-01-1965. The legal heirs of late Ibrahim, however, while registering the plot Nos.27 and 29 in favour of nominees of the applicant, refused to register the sale transaction insofar as it relates to plot No.34 of the lay out. The applicant, therefore, filed the suit, O.S.No.3198 of 1982, which was renumbered as O.S.No.225 of 1987 on the file of the I Additional Judge, City Civil Court, Hyderabad, seeking the relief of specific performance against the legal heirs of Mohd. Ibrahim. In the meanwhile, St. Alphause Educational Society filed a suit in O.S.No.1421 of 1984 on the file of the same Court seeking declaration of title and for recovery of possession of 1700 square yards of site from the Corporation on the premise that the society purchased the said site from the legal heirs of the late Mohd. Ibrahim under a sale deed, dated 23-11-1981 and that the Municipal Corporation of Hyderabad occupied the said land in the month of July, 1983. The suit filed by the applicant eventually ended in a decree on 16-08-1990 and the suit filed by the society was allowed for refund of the sale consideration paid by the society, while refusing the relief of declaration of title. The Municipal Corporation of

Hyderabad was impleaded as a party defendant in both the suits. The appeals sought to be filed against the decrees were ended in dismissal. Thereafter, the applicant made a representation, dated 18-06-1992, followed up by registered notice, dated 22-06-1992, to the Corporation for release of the land. However, the first respondent by its reply, dated 13-11-1993, stated that the land in dispute vested in the Corporation as it was earmarked for using it as a park in the lay out. There were no rules for setting apart open spaces for parks, community halls etc., when the lay out for the land covered by Sy.No.115 of Yellareddiguda was submitted by the late Mohd. Ibrahim.

The corporation resisted the application by filing a counter mentioning *inter alia* that the lay out submitted by late Mohd. Ibrahim was approved on 07-05-1968 duly subdividing the entire land of Acs.6.35 guntas into 34 plots as per the Lay Out Plan Rules, 1965 issued under Section 388 of the Hyderabad Municipal Corporation Act, 1955. According to those rules, roads and open spaces to an extent of 40% are to be left for public purposes and plot No.34 accordingly had been earmarked for park in the lay out and consequently vested in the Corporation. The Corporation has been in possession of the land in dispute, which is plot No.34, since the date of the approval of the lay out. According to G.O.Ms.No.229, Municipal Administration, dated 16-04-1994, all parks, playgrounds, roads stand vested in the Municipal Corporation. The applicant, who filed the suit in O.S.No.225 of 1987 on the file of the I Additional Judge, City Civil Court, Hyderabad, did not seek the relief of recovery of possession, but he only sought for the relief for specific performance of the agreement against defendant No.4 and since there was no prayer seeking relief of recovery of possession, the same could not be granted. The legal heirs of late Ibrahim refused to register the sale deed insofar as plot No.34 on the

ground that it has been earmarked for park. In the suit, O.S.No.225 of 1987 and in the other suit, O.S.No.1421 of 1984, wherein the applicant was added as a defendant, he admitted that the Corporation had illegally occupied the application schedule land for a garden and it had been in its possession. Even the applicant, when examined as P.W.1 in that suit, admitted in his evidence that the Corporation had been in occupation of the application schedule land. The corporation got a compound wall constructed all around the plot, developed it as a park and allotted a part of the land to the Dairy Development Corporation, which in turn constructed a building for running a Mother-Dairy. When the petitioner made a representation for deletion of the area earmarked as park, he was informed by the Government Memo. No.512/K2/69-3 MA, dated 28-04-1969, that his request to delete the park could not be complied with in the public interest. The applicant again by his letter, dated 13-11-1982, requested the Corporation and it was refused on the ground that it was a park. Therefore, the application is liable to be dismissed.

On the basis of the above pleadings, the following issues were settled by the learned Special Court:

(1) Whether the applicant is the owner of the schedule property?
(2) Whether the claim set up by respondent No.1 that the schedule land belongs to it as it is earmarked for public purpose is true and valid?
(3) To what relief?

At the time of enquiry, the applicant is examined himself as P.W.1 and got Exs.A1 to A16 marked. One of the officers of the respondent-corporation examined himself as R.W.1 and got Exs.B1 to B13 marked. Appreciating the evidence adduced on either side, both oral and documentary, the learned Special Court was of the view that the applicant was not the owner of the land in dispute, since it was

earmarked for the public purpose in the lay out plan and approved by the Corporation and therefore, the Corporation was not the land grabber. Eventually, the learned Special Court dismissed the application. As aforesaid, it is now being assailed in the instant writ petition.

During the pendency of this writ petition it may be stated at the outset that a sale deed was executed by the Court in favour of the applicant pursuant to the decree granted by it in O.S.No.225 of 1987 and that was placed before us. Earlier, during the course of enquiry before the learned Special Court, there had been no such title deed in favour of the applicant. Admittedly, a decree had been passed in favour of the applicant in the suit, O.S.No.225 of 1987, for specific performance, but it was not culminated in execution of the necessary conveyance deed, either by the defendants therein or by the Court. Visualizing the defect that there had been no title deed in favour of the applicant, although a decree had been passed in his favour, which had not yet culminated in due execution of a regular title deed, pursuant thereto after having obtained some time, the applicant got the sale deed executed by filing the necessary E.P. before the Court, which passed the decree in its favour. In that view of the matter, it is now not open to contend that there has been no title in favour of the applicant. But yet, it is still to be seen that whether the applicant is the owner of the land in dispute.

Before adverting to the contentious issues, it is expedient at the outset to mention certain admitted facts for brevity and better understanding. Late Mohd. Ibrahim was the original owner of the land covered by Sy.No.115 situate at Yellareddiguda admeasuring Acs.6.35 guntas. The applicant entered into an agreement of sale, dated 23-02-1962, with the said Ibrahim for purchasing the

entire land. Late Mohd. Ibrahim prepared a lay out, got the land divided into 34 plots and obtained the necessary sanction from the respondent-corporation in its proceedings No.112/Open./F/62. The applicant sold all the plots except plot Nos.27, 29 and 34 to various persons, in whose favour the sale deeds, however, were executed by late Mohd.Ibrahim. Late Ibrahim also executed the necessary sale deed insofar as plot Nos.27 and 29 are concerned in favour of the nominees of the applicant. But, he died even before executing the registered sale deeds. His legal representatives, therefore, executed the registered sale deed for plot Nos.27 and 29 and they refused to execute a sale deed insofar as plot No.34 is concerned. The applicant filed the suit, O.S.No.225 of 1987, seeking the relief of specific performance against the legal representatives of late Ibrahim, who were defendants 1 to 4 therein. The corporation was also *eo nominee* party to the suit. One, St. Alphause Educational Society, filed another suit, O.S.No.1421 of 1984, in respect of the same land seeking the relief of declaration of title and for recovery of possession on the premise that the legal representatives of late Ibrahim sold away the said land to it under a registered sale deed, dated 23-11-1981, but the corporation occupied the said land in the month of July, 1983. The suit filed by the applicant eventually ended in a decree in his favour. In the suit filed by the society the sale consideration paid by it was directed to be refunded to it without granting the relief of declaration of title or the relief of possession. The first respondent-corporation was also added as a party in the suit filed by the society in O.S.No.1421 of 1984.

It is now the case of the applicant that inasmuch as there were no rules for sanctioning of lay out at the relevant time, pursuant to the sanction of lay out by the first respondent-corporation the land in dispute had not vested in the corporation and the lay out has no effect

of vesting the land in corporation.

Per contra, it is the contention of the corporation that, the moment the lay out was sanctioned in favour of the late Mohd. Ibrahim, wherein the land in dispute was unequivocally earmarked for park, it automatically vested in the corporation and even otherwise pursuant to the notification issued by the Government in G.O.Ms.No.229, Municipal Administration, dated 16-04-1994. It was also the case of the corporation that when the applicant applied, for release of the land, to the Corporation, the applicant was informed by means of a memo, dated 28-04-1969, to the said representation refusing to concede his request to release the land on the premise that it could not be conceded in the public interest. Indubitably, there is any amount of significance attached to this notice and the reply given in regard thereto by the Corporation, since it has the effect of overtly denying the right of the applicant over the disputed land by the Corporation. Therefore, it becomes a subject matter of proof. With these state of affairs, it remains to be seen whether the first respondent corporation is a land grabber and whether the applicant is entitled to the relief of recovery of land in dispute. Originally, title to the land in favour of late Mohd. Ibrahim was an admitted fact, as discussed hereinabove. The title *qua* the disputed land passed in favour of the applicant the moment the conveyance deed was executed in his favour by the Court pursuance to the decree granted in O.S.No.225 of 1987. But, before that, the land in dispute, as claimed by the corporation, stood vested in it having regard to the lay out sanctioned by it and by means of a specific notification issued by the Government in G.O.Ms.No.229, Municipal Administration, dated 16-04-1994. The effect of sanctioning of the lay out plan and the effect of G.O.Ms.No.229, Municipal Administration, dated 16-04-1994, shall have to be seen

before holding that the title in fact passed in favour of the applicant pursuant to a decree granted by the competent civil Court in his favour in O.S.No.225 of 1987, which eventually culminated in execution of the necessary sale deed in his favour by the Court.

While it is the case of the corporation that as per the prevailing rules of the year 1965, issued by the Corporation under Section 388 of the Hyderabad Municipal Corporation Act, 1955, the roads, open space to an extent of 40% are to be left for public purposes before seeking any sanction of lay out by the concerned persons and in terms thereof the land in dispute was earmarked for park; it is the case of the applicant that no such rules were in fact in vogue by then and therefore sanctioning of lay out by the corporation has in fact has no effect of vesting the land in dispute in the corporation. It is even the case of the applicant that the land in dispute has not been shown as a park in the lay out plan. This has been adverted to by the learned Special Court with reference to Ex.B12, the original lay out plan submitted by late Ibrahim. The learned Special Court was of the clear view that the land in dispute was earmarked for park in the lay out plan, Ex.B12. While reaching the said conclusion, the learned Special Court eschewed Exs.A3 and A4, sale deed and registration extract of the sale deed, on the side of the applicant, from consideration. In clear and unmistakable terms, the learned Special Court reached the conclusion that Ex.B12 merits consideration and it clinchingly establishes that it was the original lay out submitted by late Mohd. Ibrahim to the Corporation while seeking its approval.

We see no compelling reasons to differ with the said conclusion reached by the learned Special Court. Be that as it may, it is appropriate here to consider Exs.B5 to B11. It may be reiterated here that Corporation *inter alia* in its counter specifically averred that

applicant made a representation for deletion of the area earmarked for park and allow him to use it for residential purposes and the corporation in its reply thereto in Govt. Memo. No. 512/K2/69-3 MA, dated 28-04-1969, refused to concede the same on the premise that it was against the public interest. That representation and the reply given by the corporation *qua* the said representation have been marked in this case. Ex.B7 is the letter, dated 28-04-1969, addressed to the applicant by the Joint Secretary to Government to his representation Ex.B5, dated 12-02-1969. The learned Special Court has not considered the effect of this correspondence in between the applicant and the respondent-corporation, although it was of the view that the recitals contained *inter alia* in Exs.B5, B6, B7 and B9 clearly show that the land in dispute was earmarked for park.

It is the contention of the learned senior counsel for the petitioner that the writ petitioner in so many clear words disputed that plot No.34, shown in the approved lay out, is not at all a park and on the other hand it is a site. Having regard to the correspondence between the writ petitioner and the corporation and the eventual rejection of the request of the petitioner to release the land for residential purposes by the corporation, presumably the learned Special Court might have assumed that it was an undisputed fact. The fact remains that in the concise statement the petitioner has taken a specific plea that there has been no park. The learned Special Court has not given any finding *inter alia* in its judgment that plot No.34 is a park and is being used as such since the date of its approval of the Ex.B12 lay out plan. It is no doubt true that the corporation *inter alia* in its counter taken a plea that it is a park, but the necessary finding which is required of from the Special Court is very much wanting in this case. The significance of the finding cannot be lost site of for the

reason that once it is held that plot No.34 is a park, it may touch upon the crucial issue as to whether the municipality under such circumstances can be called as a grabber. If the finding on the other hand is that it is not a park, the question that corporation can still be called as a land grabber is very much germane. In that view of the matter, the finding as to whether the land in dispute is a vacant site or a park is very much crucial.

The learned senior counsel seeks to place reliance upon the judgment of the Apex Court in *Pt. Chet Ram Vashist v. Municipal Corpn. Of Delhi*[1]. In this case the Apex Court was of the view that the lay out plan, which requires to be sanctioned by the municipal council, cannot have the effect of vesting of the land earmarked for a public purpose *inter alia* in the lay out. Therefore, it is the contention of the learned counsel that at best the corporation stands vis-à-vis the person who submitted the lay out in the capacity of a trustee, but it cannot be the owner of the same on the premise that it stood vested in the corporation the moment the lay out had been sanctioned by it. However, it has also been made clear in the said judgment by the Apex Court that the Act also imposes a bar on exercise of power by the owner in respect of the land covered by the lay out plan. Having proposed particular piece of land in the lay out plan as a place for common use or for use by the public, it is not open to the owner to turnaround and contend that he still is the owner of that land and can be used for a different purpose, seems to be the intention under the Act. The crucial question in the context seems to be that plot No.34 of EX.B12 lay out plan is a vacant site or is a park, in view of the specific denial of the writ petitioner *inter alia* in his application. A finding in regard thereto is, therefore, essential.

It is emanating from the material on record that the first

respondent-corporation had taken a specific plea *inter alia* in its statement filed in O.S.No.1421 of 1984, wherein the applicant was also a party, that the land in dispute could not have delivered to the plaintiff therein, since it stood vested in the corporation and was in its possession as a park being maintained by it. Again in reply to the representation submitted by the applicant in Ex.B5, he was informed under Ex.B7 that his request could not be conceded for release of the land and for permission to use it as a residential plot. Both these stances taken by the corporation, either in the suit or in its letter, Ex.B7, is quite unequivocal and certainly is in the nature of overtly denying the right of the applicant in claiming ownership over plot No.34, which is the land in dispute. Such a denial on the part of the first respondent was undoubtedly traced to the year 1969, long prior to the filing of the instant application, L.G.C.No.87 of 1994. The period interregnum from denial of the title of applicant till filing of the instant application in L.G.C.No.87 of 1994, was obviously more than two decades. The effect of such a denial and the continuous possession of the corporation in disputed land, which, according to it, is being used as a park, has significantly been lost sight of by either of the parties and the Special Court as well. Instead, the Special Court proceeded only on one dimension that whether the land in dispute was a park earmarked as such in the lay out plan and stood vested in the corporation or not. It is no doubt true that a clear-cut finding has been reached by the learned Special Court that the Lay Out Rules, 1965, apply and therefore the contention of the applicant cannot be countenanced. The learned Special Court in the penultimate para of its judgment was of the view that applicant was not the owner of the application schedule land, since it was earmarked for public purpose. To buttress the said conclusion, the learned Special Court discussed the provisions of

Section 391 of the Hyderabad Municipal Corporation Act and a decision rendered by this Court, while referring to Section 391 of the Act. Earmarking the land for park is one aspect and the applicant, who obviously had a title deed in his favour, lost his title to the corporation is an altogether different aspect. The latter aspect has not been considered by the Special Court, as discussed hereinabove. It is expedient to advert to that issue and to dispose of the matter effectively once for all. We are of the considered view that it is expedient to remit the matter to the Special Court for considering as to whether the land in question is a park and is being used as such, or a vacant land, and the effect of overt denial of the title of the applicant under Ex.B7 by framing appropriate issues on those two aspects and adjudicate the same after giving opportunity to both the parties.

For the above reasons, the Writ Petition is allowed and the impugned judgment to the extent indicated above is hereby set aside and the matter is remitted to the Special Court for fresh consideration after framing the appropriate issues on prescriptive right and for adjudication of the same after hearing either side. The costs shall abide the result.

T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

02nd November, 2006.

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[1] AIR 1995 SC 430